

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 17, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1628

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

MARINA LUDWIGSON,

PLAINTIFF-APPELLANT,

V.

**THOMAS CLARKIN, JANICE CLARKIN AND TY COBB,
D/B/A VINTAGE REALTY,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Barron County:
FREDERICK A. HENDERSON, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Marina Ludwigson appeals a judgment dismissing her breach of contract and misrepresentation action against Thomas and Janice

Clarkin and their real estate agent, Ty Cobb.¹ The Clarkins sold Ludwigson commercial property on a five-year land contract. A portion of the property was sold by warranty deed and a portion was sold by quitclaim deed. Ludwigson brought this lawsuit after she discovered that the Clarkins did not have title to the portion of the property that was sold by quitclaim deed. After commencement of this action, the Clarkins acquired title to the parcel in question. Because the Clarkins did not breach the contract and Ludwigson has not identified any specific misrepresentation by the Clarkins or Cobb, we affirm the dismissal of this action.

The Clarkins' sale of a portion of the property before they acquired title to it does not constitute a breach of contract. Their duty to sell does not arise until Ludwigson has paid all sums due under the terms of the land contract. It is not essential that the vendor in a land contract have title and capacity to convey the land at the time he signs the contract. See *Wiegman v. Alexander*, 4 Wis.2d 118, 126, 90 N.W.2d 273, 279 (1958). It is sufficient if he is able to convey the land when he is required to do so under the terms of the land contract. *Id.* In the absence of fraud or misrepresentation, mere lack of title in the vendor at the time he entered into the contract does not entitle the vendee to rescind. *Id.*

Ludwigson's complaint does allege intentional and strict liability misrepresentation, but Ludwigson has never identified any specific representation regarding title. Neither an intentional misrepresentation nor a strict liability misrepresentation occurs in the absence of a representation of fact. See WI JI Civil 2401 (1997); WI JI Civil 2402 (1993). Ludwigson has not identified any

¹ Although the complaint alleged only intentional and strict liability misrepresentation, Ludwigson's brief suggests that she also has a claim for breach of contract. In this opinion, we will address the dismissal of both the contract and tort actions.

representation made by the Clarkins or Cobb that would suggest that they misrepresented their ownership interest in the property. A quitclaim deed, by itself, is not a representation as to the ownership of property. “A quitclaim deed shall pass all of the interest in or appurtenant to the land described which the grantor could lawfully convey, but shall not warrant or imply the existence, quantity, or quality of such conveyance.” Section 706.10 (4) STATS. A quitclaim deed does not profess a valid title nor contain any warranty or covenants for title. *See* BLACK’S LAW DICTIONARY 1251 (6th ed. 1990). As a matter of law, a land contract to sell property by quitclaim deed is not a representation of ownership in property. Rather, a contract agreeing to convey by quitclaim deed and the quitclaim deed itself indicate some doubt as to the Clarkins’ ownership interest. In the absence of any other identified representations by the Clarkins or Cobb, the trial court properly dismissed the misrepresentation claims.

By the Court.—Judgment affirmed

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

